

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

LeTONIO C. SWADER,

Petitioner,

v.

STATE OF TENNESSEE,

Respondent.

No. 3:10-0465
Judge Haynes

INPDK
Thurman is
DENIED.
Will [signature]
10-6-12

RESPONDENT'S MOTION TO DISMISS, OR IN THE ALTERNATIVE, FOR A MORE
DEFINITE STATEMENT

Comes now the respondent, the State of Tennessee, and pursuant to Rule 12 of the Federal Rules of Civil Procedure, and this Court's Order August 5, 2010 Order to respond to the petition within 20 days [D.E. No. 15], and moves this Court to dismiss the petition, or in the alternative, issue an Order that the petitioner file an amended petition more definitely stating the petitioner's claims. As grounds therefore, the respondent states:

1. The petition names the State of Tennessee as the respondent in this action. The State is immune from suit. *Edelman v. Jordan*, 415 U.S. 651 (1974). The proper respondent in a federal habeas claim is the warden where the petitioner is incarcerated. Federal Habeas Rule 2(a). A petition against an immune party is subject to dismissal. *Clemons v. Mendez*, 121 F.Supp. 2d 1101, 1102 (E.D. Mich. 2000); *Edwards v. Johns*, 450 F.Supp. 2d 755, 757 (E.D. Mich. 2006) citing *Hogan v. Hanks*, 97 F.3d 189, 190 (7th Cir.1996).